

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:

BKY 03-38031 GFK

*David Michael Maynard and
Litia Maynard,*

Chapter 13

Debtors.

NOTICE OF OBJECTION TO
CONFIRMATION OF PLAN

TO: All parties entitled to notice pursuant to LOCAL RULE 9013-3.

1. Jasmine Z. Keller, Standing Chapter 13 Trustee (the "Trustee"), by and through the undersigned counsel, moves the court for the relief requested below and gives notice of hearing herewith.

2. A hearing on this motion will be held before the Honorable Chief Judge Gregory F. Kishel, Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, at 10:30 a.m. on **January 29, 2004**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on January 28, 2004, which is 24 hours before the time set for hearing, or filed and served by mail not later than January 26, 2004, which is three business days before the hearing date. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005, and LOCAL RULE 1070-1. The proceeding is a core proceeding. The petition commencing this case was filed on November 25, 2003. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §§ 1322 & 1325 and FED. R. BANKR. P. 3015 and LOCAL RULES 3015-1. Movant requests relief with respect to denial of confirmation of the Plan.

6. The Debtor filed a Chapter 13 Plan dated November 7, 2003 (the "Plan"). The Plan provides for payments of \$375 per month for 36 months for a total contribution of \$13,500. The Plan would allow for distribution of \$8,540.70 on account of estimated nonpriority unsecured claims of approximately \$54,258. As of the date of this objection, the proposed return to unsecured creditors appears to be no more than 16%.

7. To date, the Debtor has paid the Trustee \$375 and is current in contributions to the Plan through December 2003.

8. Debtor David Michael Maynard has exempted his interest in rollover IRAs, collectively valued at filing at \$27,208.¹

9. Debtor David Michael Maynard has also disclosed a potential inheritance on Schedule B, which he valued as “unknown” at filing. He has not claimed this asset as exempt, and, if received, would be additional non-exempt property.

9. The Trustee has objected to exemption of the IRA, said objection to be heard on February 4, 2004 at 3:30 p.m.

10. The Trustee objects to confirmation of the Plan on the grounds that the Plan does not meet the best interest of creditors under 11 U.S.C. § 1325(a)(4). *And see: In re Jenkins*, No. 03-45729, 2003 WL 22423164 (Bankr. D. Minn. October 24, 2003).

11. If necessary, the Trustee reserves the right to call a member of her staff and the Debtors to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests entry of an order as follows:

- a. Denying confirmation of the Debtors’ Plan; and
- b. Granting such other and further relief the Court deems equitable and just.

Dated: January 20, 2004

Jasmine Z. Keller, Trustee

/s/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Counsel to the Chapter 13 Trustee
310 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

¹ The Debtors also exempted 75% of other cash assets held in financial accounts in the total amount of \$650 at filing. The non-exempt amount of these assets is \$162.50. The Debtors disclosed miscellaneous jewelry valued at \$400, which was not claimed as exempt.

VERIFICATION

I, Margaret H. Culp, an employee of Jasmine Z. Keller, the Standing Chapter 13 Trustee, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 20, 2004

/e/ Margaret H. Culp
Margaret H. Culp

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MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtors in their Schedules.

LEGAL DISCUSSION

Pursuant to 11 U.S.C. § 1325(a)(4), the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim must not be less than the amount that would be paid on such claims if the estate of the debtor were liquidated under chapter 7 of this title on such date. *11 U.S.C. § 1325(a)(4). In re Jenkins*, No. 03-45729 , WL 22423164 (Bankr. D. Minn. October 24, 2003).

In this case, the IRA is valued at \$27,708, non-exempt cash assets are valued at \$162.50, and non-exempt jewelry is valued at \$400, for a total of \$28,270.50. It is the Trustee's position that the Plan should pay at least that amount to unsecured creditors in order to meet the "best interest" test. Based upon the possibility of an inheritance, the Plan may need further modification if and when the inheritance is received to continue to meet the best interest test.

For the reasons stated herein, the Trustee respectfully requests that confirmation of the Debtors' proposed Plan be denied, and for such other relief as the Court finds just and equitable.

Dated: January 20, 2004

Respectfully submitted:

/e/ Margaret H. Culp

Thomas E. Johnson, ID #52000

Margaret H. Culp, ID #180609

Counsel for Chapter 13 Trustee

12 South 6th Street, Suite 310

Minneapolis, MN 55402-1521

612-338-7591

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UNSWORN DECLARATION
FOR PROOF OF SERVICE

The undersigned, an employee of Jasmine Z. Keller, Standing Chapter 13 Trustee, declares that on January 20, 2004, she served the following:

1. Notice and Objection to Confirmation of Plan;
2. Memorandum of Facts and Law
3. Proposed order; and
4. Unsworn Declaration for Proof of Service

on each of the entities named below as follows:

By electronic means only:

U.S. Trustee

612-664-5516

Craig W. Andresen, Esq.

952-831-3821

By United States Mail, postage pre -paid:

David M. Maynard

16570 Genesee Avenue

Rosemount, MN 55068

Litia Maynard

9025 Old Cedar Avenue South, Apt. 207

Bloomington, MN 55425

Craig W. Andresen, Esq.

2001 Killebrew Drive, Suite 330

Bloomington, MN 55425

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 20, 2004

/e/ Margaret H. Culp

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ORDER

At St. Paul, Minnesota _____.

This matter came before the Court on the Chapter 13 Trustee's Objection to Confirmation of Plan. Appearances were noted on the record. Based on the files, the proceedings, and record herein,

IT IS ORDERED:

Confirmation of the Debtors' Plan is **DENIED**.

Honorable Gregory F. Kishel
Chief United States Bankruptcy Judge